

## **II. RESPONSE TO OFFICE ACTION**

The Office Action rejected Claims 2, 5, 19-21 and 24-26. Reconsideration of the claims in light of the above amendments and the following remarks is respectfully requested. The Examiner's comments from the Office Action are reprinted below in 10-point bold type and are followed by Assignee's remarks.

### **A. Claim Rejections - 35 USC § 112**

Claims 5, 2, 9, 19, 20, 21, 25 and 26 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 5, second line from the bottom, "one of the at least one notches" has no antecedent; it should be --said at least one notch--.

Claim 25 fails to further limit the invention. The limitation of this claim is included in claim 24, from the claims depends.

In an effort to move this case along, the following amendments were made to the claims to more particularly point out the claimed invention. Specifically, claim 5 was amended as outlined above, and claims 24 and 25 were amended to more particularly describe the claimed invention. As such, it is believed claims 5, 2, 9, 19, 21, 25 and 26 are in condition for allowance.

### **B. Claim Rejections - 35 USC § 102**

Claim 24 is rejected under 35 U.S.C. 102(b) as being anticipated by Jerick (Pat No 5,581,023).

The patent to Jerick discloses an adjustable device comprising a lower tray (55) and upper tray (56), four legs (62-65) having one end attached (functionally associated) to the upper tray, and the other end slidably attached (slidably associated) to the lower tray; the trays being substantially identical, wherein the height of the device can be adjusted by the user. This patent is used as the described method. The article being used in the method is not important per se, since it has no effect in the way it is been used.

In an effort to more particularly point out the claimed invention, claim 24 has been amended to include limitations not found in the prior art of record. As such, it is believed claim 24 is in condition for allowance.

### **C. Claim Rejections - 35 USC § 103**

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jerick. The use of pneumatic means in lieu of manual one is seen a mechanical expedient to facilitate the use of the

device.

Claim 26 depends from claim 25, which is believed to be allowable. As such, it is believed that claim 26 is in condition for allowance.

**D. Allowable Subject Matter**

Claims 10-18, 22, 23 and 29 are allowed.

Claims 5, 2, 9, 19, 20 and 21 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action.

Claims 5 and 25 have been amended as described above. As such, it is believed that claims 2, 9, 19, 20, and 21 depending (directly or indirectly therefrom) are in condition for allowance.

**F. Other**

Applicant's arguments regarding claim 24 been fully considered but they are not persuasive. As indicated above, this claim is directed to a method claim, and the item being used in the method is not important as long as there is a teaching of the claimed method, even if being shown with a different article.

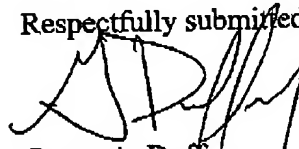
Assignee respectfully traverses the Examiner's rejection. Assignee notes that at least the first limitation -- i.e. the step of providing the novel apparatus described therein as amended -- is not disclosed, taught or suggested the prior art. Further, in an effort to more particularly point out the claimed invention, Assignee as clarified the wording of claim 24. As such, it is believed that claim 24 is allowable.

Further, it is noted that in a effort to more particularly point out the claimed invention, claim 13 was amended as shown. It is noted that claim 10 remains dependent on claim 13, adding the limitation of the frustoconical member functionally associated with the pivot.

**G. Conclusion**

The Examiner is invited to contact the undersigned attorney at 713.787.1478 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



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